
Financial Institutions & Insurance Committee

HB 1565

Brief Description: Expanding the scope of business continuity plans for domestic insurers.

Sponsors: Representatives Kirby, Kelley, Williams and Simpson; by request of Insurance Commissioner.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Expands the type of emergencies requiring emergency preparedness planning.• Expands the category of domestic entities that are subject to emergencies requiring preparedness planning.

Hearing Date: 1/29/09

Staff: Jon Hedegard (786-7127)

Background:

"Insurer" is defined in the insurance code as "every person engaged in the business of making contracts of insurance, other than a fraternal benefit society. A reciprocal or interinsurance exchange is an "insurer" as used in this code. Two or more hospitals that join and organize as a mutual corporation pursuant to chapter [24.06RCW](#) for the purpose of insuring or self-insuring against liability claims, including medical liability, through a contributing trust fund are not an "insurer" under this code. Two or more local governmental entities, under any provision of law, that join together and organize to form an organization for the purpose of jointly self-insuring or self-funding are not an "insurer" under this code. Two or more persons engaged in the business of commercial fishing who enter into an arrangement with other such persons for the pooling of funds to pay claims or losses arising out of loss or damage to a vessel or machinery used in the business of commercial fishing and owned by a member of the pool are not an "insurer" under this code."

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under the insurance code, insurers formed under the laws of Washington ("domestic insurers") must procedures to continue to operate in a national emergency. The boards of director of a domestic insurer may adopt emergency bylaws to enable the insurers to reasonably operate in a national emergency. If emergency bylaws are not adopted by a domestic insurer, the following provisions are applicable:

- three directors is a quorum for the transaction of business at a board meeting;
- a vacancy in the board may be filled by a majority of the remaining directors or by a sole remaining director;
- if there are no surviving directors, but at least three vice presidents of an insurer, the three vice presidents with the longest term of service are the directors and possess all of the powers of the previous board. By majority vote, the board of directors may elect other directors; and
- if there are not at least three surviving vice presidents, the commissioner or designated person exercising the powers of the commissioner must appoint three persons as directors and these persons by majority vote may elect other directors.

The board of directors of a domestic insurer may provide that in the event of a national emergency:

- there is a list of succession in the event of the death or incapacity of the president, the secretary, or the treasurer of the insurer. The list shall establish the order of succession by name or title and may prescribe the conditions under which the powers of the office shall be exercised; and
- the principal office and place of business of the insurer is at a named or described location. Alternate locations and establish an order of preference may be provided.

Summary of Bill:

The existing provisions of law that apply to business continuity for a domestic insurer in a national emergency are extended to:

- local and state emergencies;
- significant business disruptions; and
- issuers (a group that encompasses domestic insurers, domestic fraternal benefit societies, domestic certified health plans, domestic health maintenance organizations, and domestic health care service contractors).

New requirements are created that require issuers to:

- create and maintain a written business continuity plan (plan) identifying procedures for a local, state, or national emergency or significant business disruption. These procedures must be reasonably designed to enable the issuer to meet its existing obligations;
- make the plan must available to the commissioner upon request;
- update its plan in the event of any material change to the issuer's operations, structure, business, or location;
- conduct an annual review and test of the plan;
- describe senior management roles and responsibilities;
- designate a member of senior management responsible for approving the plan and conducting the required annual review and test; and

- disclose to its policyholders or subscribers how its plan addresses the possibility of a future significant business disruption and how the issuer intends to respond to events of varying scope.

The elements of a plan are intended to be flexible and tailored to the size and needs of an issuer. Each plan must address the following elements:

- data back-up and recovery;
- information system disaster recovery;
- all financially significant activities and applications;
- restoration priority based upon a business impact analysis;
- alternate communications between policyholders or subscribers and the issuer;
- alternate communications between the issuer and its employees;
- alternate physical location of employees;
- regulatory reporting;
- communications with regulators; and
- how the issuer will assure policyholders' prompt access to their funds and securities in if issuer is unable to continue its business.

If an element is not addressed in the plan, the issuer must document the reasoning for the exclusion of the element.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.